

Friends of Everglades & Center for Biological Diversity v. Noem, *et al.*

Scott Hiaasen & Paul Schwiep, CB

Tania Galloni & Domnique Burkhardt, EJ

Elise Pautler Bennett & Jason Totoiu, CBD

What Does NEPA Require?

NEPA is a “a set of ‘action-forcing’ procedures that require that agencies take a **‘hard look’ at environmental consequences,** . . . and that provide for **broad dissemination of relevant environmental information.** . . . NEPA ... does not mandate particular results, but simply prescribes the necessary process.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). “**NEPA requires federal agencies to prepare an [EIS] for any ‘major Federal action[] significantly affecting the quality of the human environment.’**” *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng’rs*, 833 F.3d 1274, 1278 (11th Cir. 2016) (quoting 42 U.S.C. § 4332(2)(C)); see also 42 U.S.C. § 4332(C).

APA Provides Cause of Action

- “APA provides the cause of action for a NEPA challenge.” *WildEarth Guardians v. U.S. Forest Serv.*, 137 F.4th 1068, 1082 (10th Cir. 2025). Under APA, the court ***must*** “hold unlawful and set aside agency action” that is “found to be . . . ***arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law***” or that is undertaken “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A) & (D).
- Under NEPA’s “hard look” requirement, courts “will overturn an agency’s decision as arbitrary and capricious” if “***the agency failed entirely to consider an important aspect of the problem.***” *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209, 1216 (11th Cir. 2002).

“Federal Action” Under NEPA

“Major federal action can exist when the primary actors are not federal agencies There are no clear standards for defining the point at which federal participation transforms a state project into federal action. . . . ***The touchstone of major federal activity constitutes a federal agency’s authority to influence nonfederal activity. ‘The federal agency must possess actual power to control the nonfederal activity.’***”

United States v. S. Fla. Water Mgmt. Dist., 28 F.3d 1563, 1572 (11th Cir. 1994), *cited in* TRO at 7.

Federal Action Proven

- PX 45: Secretary Noem: DHS Requested Facility (at 1:30-2:15)
- FDEMEX 7: EO 23-03: Authorizes FDEM to “enter into agreements with any and all agencies of federal government . . . to meet this emergency” (at 3)
- PX 43: SERT Continuity of Operations Plan: “DHS and [FEMA] . . . ***request[ed] State . . . to supplement . . . capacity.***” (at 4)
- PX 135: ICE Field Officer Compliance Inspection of TNT Detention Center



Alligator Alcatraz will be funded largely by FEMA's Shelter and Services Program, which the Biden administration used as a piggy bank to spend hundreds of millions of American taxpayer dollars to house illegal aliens, including at the Roosevelt Hotel that served as a Tren de Aragua base of operations and was used to shelter Laken Riley's killer.

Before this program was used to house criminal illegal aliens. Now, it is being used to detain criminal illegal aliens while they await deportation.

PX 144 ¶ 5



8 U.S.C. 1103(a)(11)(B)

(11) [DHS] in support of persons in administrative detention in non-Federal institutions, is authorized to . . . **(B)** to enter into a *cooperative agreement* with any State . . . *for the necessary construction . . . required to establish acceptable conditions of confinement and detention services in any State* . . . which agrees to provide guaranteed bed space for persons detained by the Service.

Meeting of Minds Proven

- Noem June 23 post that DHS working “***at turbo speed***” to deliver “***mass deportation***,” including the expansion of “facilities and bed space in just days, ***thanks to our partnership with Florida.***” Pls’ 44, at ¶ 8 & Exh. 6
- Noem July 1 post that TNT Site will “***provide DHS with the beds and space needed***” for immigration detention. Pls’ 44, at ¶ 4 & Exh. 2.
- FDEM official post July 3 that facility was “stood up in record time” ... “***in coordination with DHS.. and ICE.***” Pls’ 44, at ¶ 3 & Exh. 1.
- DHS official July 8 post responding to reports of squalid conditions at TNT site by saying “***ICE has higher detention standards that most U.S. prisons.***” Pls’ 44, at ¶ 5 & Exh. 3.

ICE & FDHSMV 287(g) Agreement (FDEMEX 28)

- Purpose: To set forth terms for LEA personnel “to perform certain functions of an immigration officer ***under the direction and supervision*** of ICE.” at 1.
- Required that “participating LEA personnel be subject to ICE ***direction and supervision.***” (at 1)
- “ICE officers will provide ***direction and supervision*** for participating LEA personnel . . . as to immigration enforcement functions” (at 2)
- “Participating LEA personnel are not authorized to perform immigration officer functions except when working under the ***supervision or direction*** of ICE.” (at 6)
- Stephen Miller: This is an “ICE Facility.” (PX 106)

Venue Exists In Southern District of FL

- County has not objected
- Federal defendants subject to venue under 28 U.S.C. § 1391(e)(1)(C)
 - Plaintiff resides in S.D. Fl. and case is not about right, title or interest in real property. *Earth Island Inst. v. Quinn*, 56 F. Supp. 3d 1110, 116 (N.D. Cal. 2014).
- State Defendants: Four pleadings filed over month—did not object to venue (D.E. 16, 28, 35 & 39)
- Venue “can be raised so easily,” courts “strictly apply the waiver rule” and require defendants to raise this issue in their “**first defensive move**.” *Manchester Knitted Fashions v. Amalgamated Cotton Garments*, 967 F.2d 688, 692 (1st Cir. 1992).
- Opp’n to Pl motion can be such a ‘first responsive pleading’ or defensive move.” *Bautista-Perez v. Holder*, 681 F. Supp. 2d 1083, 1091 (N.D. Cal. 2009).

“Substantial Part of Events or Omissions” Occurred in Southern District of Florida

- Division commandeered Miami-Dade County (MDC) property in MDC. PX 51, 52
- Commandeered entire property 1/3 of which is in MDC. PX 87.
- Omitted conferring with MDC over impacts on MDC. PX 47-49, 104 (Mayor’s letters raising MDC concerns)
- Omitted to consult with Tribe in MDC. Tribe X 22 & 23.
- Wetlands, species, runoff impacts flow to Monroe and MDC. (Dr. McVoy and Ms. Castaneda testimony)
- Impacts to Tribe reserved areas in MDC where 80% of tribal members live. Tribe X 6.

Irreparable Harm Standard

- Injunctive relief for a NEPA violation is proper where ***irreparable injury is likely***. *Winter v. NRDC*, 555 U.S. 7, 10 (2008).
“[E]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or ... of long duration, i.e. irreparable.” *Fla. Key Deer v. Brown*, 386 F. Supp. 2d 1281, 1285 (S.D. Fla. 2005). A presumption of “[i]rreparable harm results where environmental concerns have not been addressed by the NEPA process. . . . This harm is not merely a procedural harm; ‘the risk implied by a violation of NEPA is that real environmental harm will occur through inadequate foresight and deliberation.’” *Miccosukee Tribe of Indians of Florida v. United States*, No. 08-21747-CIV-UNGARO, 2008 WL 11332080, at *11 (S.D. Fla., Nov. 13, 2008) (quoting *Sierra Club v. Marsh*, 872 F.2d 497, 504 (1st Cir. 1989)).



PX 82, at 3

PX 136 8/8/25

PX 139 8/8/25

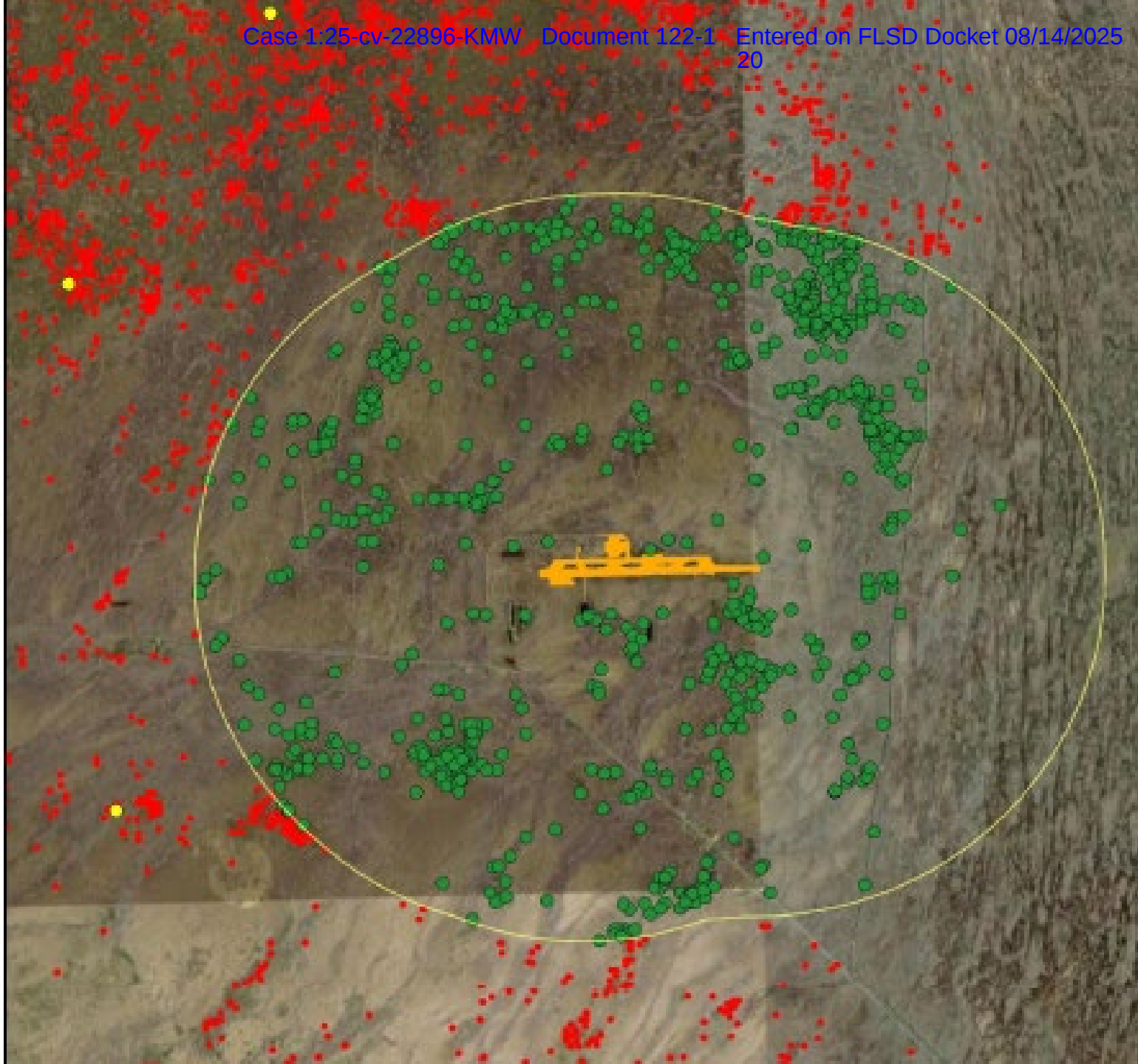


Description	Quantity	Unit	Unit Price	Total Amount
Geotechnical Survey	1.00	Each	\$44,000.00	\$44,000.00
Civil Engineering	1.00	Each	\$450,000.00	\$450,000.00
Permanent Fencing Installation (Per LF)	22,000.00	Each	\$310.00	\$6,820,000.00
Roadway Construction - Asphalt (Per SY)	200,000.00	Each	\$55.00	\$11,000,000.00
Vector Control Service	1.00	Daily	\$17,500.00	\$787,500.00

PX 126



PX 10 at 3

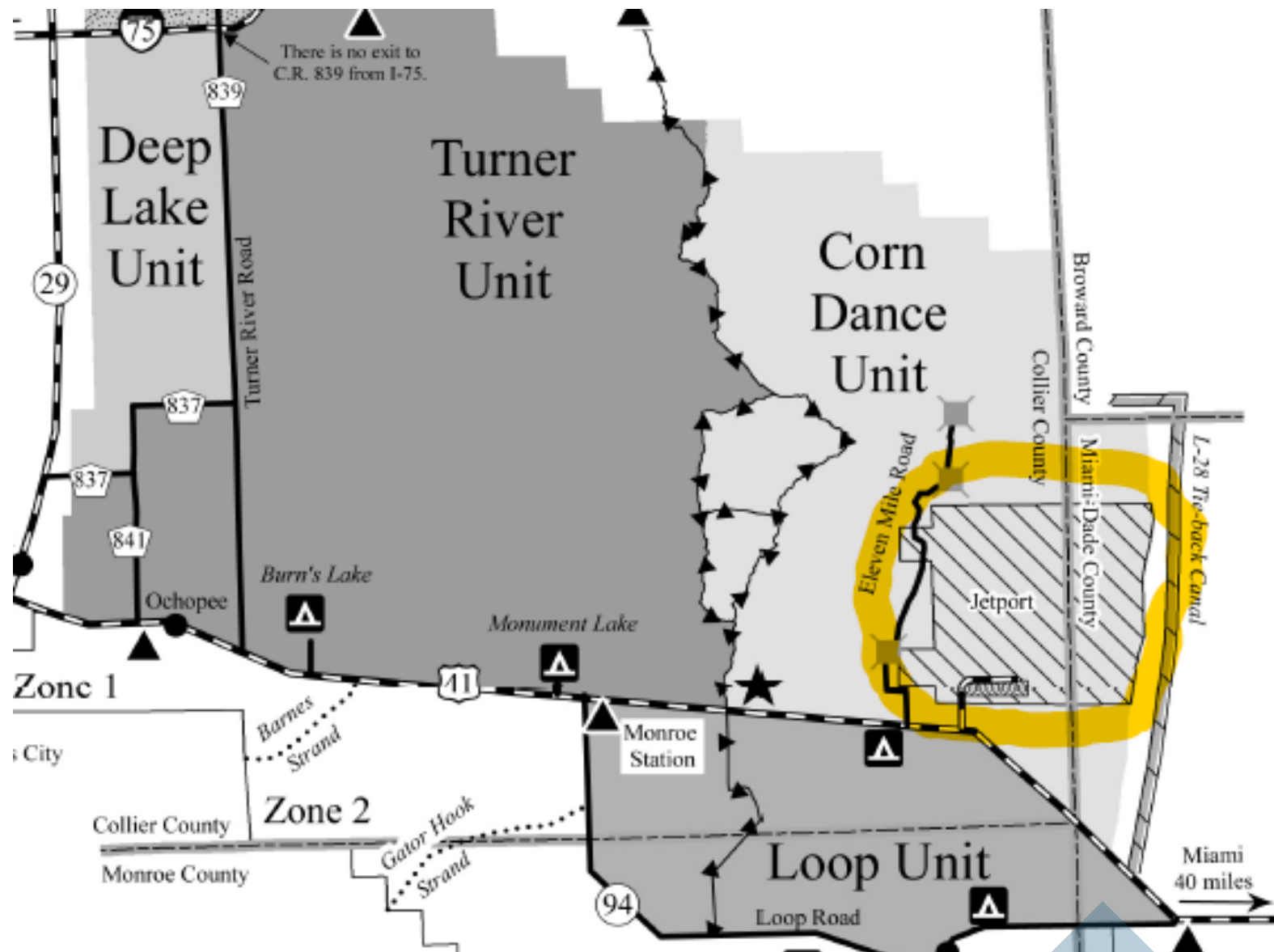


Kautz PX 25 at 26



PX 83 at 2

Big Cypress Management Area



PX 88